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11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF ARIZONA**
14

15
16 State of Arizona, *ex rel.* Kristin K. Mayes,
17 Attorney General, *et al.*,

18 Plaintiffs,

19 v.

20 Michael D. Lansky, L.L.C., dba Avid
21 Telecom, *et al.*,

22 Defendants.
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Case No.: 4:23-cv-00233-TUC-CKJ

**PLAINTIFFS' REPLY IN SUPPORT
OF MOTION TO DETERMINE
THE SUFFICIENCY OF
DEFENDANTS' RESPONSES AND
OBJECTIONS TO PLAINTIFFS'
FIRST REQUESTS FOR
ADMISSION**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs respectfully submit their Reply to Defendants’ Response to Plaintiff’s Motion to Determine the Sufficiency of Defendants’ Response to First Requests for Admission (“Defendants’ Response”). Below, Plaintiffs establish that Plaintiffs’ attempts to meet and confer met the requirements of Fed. R. Civ. P. 37; that Defendants’ untimely responses are admitted by operation of Fed. R. Civ. P. 36, or, in the alternative, that the Court order Defendants to serve new responses without objection; that Defendants’ responses are insufficient given the typographical errors and boilerplate objections they contain; and that Defendants’ responses are evasive and fail to comply with the requirements of Fed. R. Civ. P. 36.

II. ARGUMENT

A. Plaintiffs’ Made Sufficient Attempts to Meet and Confer with Defense Counsel.

Fed. R. Civ. P. 37(a)(1) requires that the party bringing a discovery motion certify that they have “in good faith conferred or attempted to confer” with the opposing party. As set out in Plaintiffs’ Motion (Doc. 187) and below, Plaintiffs have met this standard.

In accordance with defense counsel’s stated preference to meet and confer by written correspondence, on October 17, 2025, Plaintiffs sent defense counsel a detailed, substantive email detailing the deficiencies present in Defendants’ responses to Plaintiffs’ First Requests for Admission and requesting defense counsel’s availability to discuss the issues further by October 22, 2025. (Doc. 187-2, Ex. G). Defense counsel did not respond to this email. (Doc. 187-1, ¶ 9).

At the November 24, 2025, status conference with the Court, Plaintiffs raised the issue of Defendants’ deficient responses, summarizing the concerns outlined in the October 17 email and informing the Court that the Defendants had not responded to the email. Defendants’ counsel informed the Court that he believed that supplemental responses had been sent approximately one month earlier and that he would follow up.

1 Following the November 24, 2025, status conference, the parties engaged in
2 extensive email communications concerning Defendants' Responses and whether
3 Defendants had in fact supplemented their responses as counsel had represented to the
4 Court. Ultimately, Defendants' counsel acknowledged that no supplemental responses had
5 been sent by any of the Defendants. (*See* Doc. 187-1, ¶¶ 10-18; Doc. 187-2, Ex. I).

6 On December 1, 2025, Defendant Reeves provided a supplemental Response
7 correcting some typographical errors. (*See* Doc 187-1, ¶18; Doc. 187-2, Ex. P) Defense
8 counsel's response to Plaintiffs' substantive concerns came on December 4, 2025, over six
9 weeks after Plaintiffs' initial email. (*See* Doc. 191-3). Rather than agreeing to discuss
10 Plaintiffs' concerns, defense counsel's long-awaited reply flatly denied that Defendants'
11 responses were improper ("Our objections are not 'boilerplate' under that standard."; Doc.
12 191-3, pg. 2) and conditioned their participation in a meet and confer on Plaintiffs'
13 completion of busy work ("If you do so [provide another, more-detailed written description
14 of disputes], we will be pleased to respond at the meet and confer."; Doc. 191-3, pg. 2).

15 Plaintiffs' good-faith attempts to confer with defense counsel, as required by Fed.
16 R. Civ. P. 37, were frustrated by Defendants' lack of meaningful, substantive responses.
17 *See Silver Screen Films Inc. v. Hollywood Media Venture, LLC*, No. 2:22-cv-08901-SB-
18 SSC, 2023 U.S. Dist. LEXIS 203137, at *6 (C.D. Cal. Nov. 9, 2023) (Plaintiff ordered to
19 show cause, where "the Court is especially concerned by the conduct of Plaintiff's counsel,
20 who [] asks the Court to strike the motion...as procedurally improper when he was the one
21 who prevented Defendants' compliance with the Court's rules by not responding to
22 Defendants' attempt to meet and confer.").

23 Additionally, Plaintiffs engaged in substantive correspondence with Defendants
24 concerning the discovery disputes, which satisfies Fed. R. Civ. P. 37's requirements. *See*
25 *Yellowstone Valley Brewing v. Luxco, Inc.*, No. CV 08-40-BLG-RFC-CSO, 2010 U.S. Dist.
26 LEXIS 158224, at *7 (D. Mont. March 25, 2010) (lack of meet and confer call not grounds
27 for denying discovery motion when moving party "pursue[d] detailed, comprehensive
28 correspondence...in an attempt to resolve the discovery issues"). Months before filing this

1 Motion, Plaintiffs presented their substantive issues to Defendants and attempted to
 2 schedule a time for the parties to discuss further. Accordingly, Plaintiffs have met their
 3 meet and confer obligations under Fed. R. Civ. P. 37.

4 **B. Defendants' Responses are Untimely and, By Operation of Law, Are**
 5 **Admitted.**

6 If not timely answered, requests for admission are admitted by operation of law.
 7 Fed. R. Civ. P. 36(a)(3). Plaintiffs cite *Hadley v. United States* not to equate Defendants'
 8 untimeliness with that present in *Hadley*, but for the Ninth Circuit's succinct description
 9 of the effect of Fed. R. Civ. P. 36: "Under Rule 36(a) of the Federal Rules of Civil
 10 Procedure, if a party fails to answer a request for admissions within 30 days, the requested
 11 items are deemed admitted. Any matter thus admitted is conclusively established unless
 12 the court on motion permits withdrawal or amendment of the admission." 45 F.3d 1345,
 13 1348 (9th Cir. 1995). Defendants do not deny that their responses were untimely, and they
 14 have not moved this Court to withdrawal their admissions. Accordingly, Defendants'
 15 Responses to Plaintiffs' First Set of Requests for Admission should be deemed admitted.

16 **C. Errors and Improper Objections Render Defendants' Untimely**
 17 **Responses Insufficient under the Federal Rules of Civil Procedure**

18 **1. Defendants Incorrectly Claim that the Deficiencies in their**
 19 **Responses are Resolved.**

20 Plaintiffs' Motion seeks corrected responses from Defendant Reeves given
 21 typographical errors that render them difficult to use for evidentiary or procedural
 22 purposes. The request for corrected responses is proper, and Defendants state in their
 23 Response to Plaintiffs' Motion that Defendant Reeves' Supplemental Response to
 24 Plaintiffs' First Request for Admissions is "devoid of any continuing. . . typographical
 25 errors." (D. 191, p. 8) Defendants further state that Defendant Reeves' Supplemental
 26 Response to Plaintiffs First Request for Admissions "conformed all of their references and
 27 sent back a revised version to Plaintiffs well before this Motion was filed." (D. 191, p. 8)
 28

1 However, footnote 1 of Plaintiffs' Motion lists 32 Requests for Admission where
 2 these purportedly corrected errors persist in Defendant Reeves' Supplemental Responses
 3 to Plaintiffs' First Request for Admissions. (Doc. 187, at p. 6) Given that the errors persist
 4 though Defendants claim they are resolved, Defendants Reeves' responses remain
 5 insufficient under Rule 36 and require Defendant Reeves to serve a new supplemental
 6 response with these errors corrected.

7 **2. Defendants Misstate the Standard of Review in Discovery**
 8 **Disputes over their Boilerplate Objections.**

9 Defendants incorrectly state that Plaintiffs bear the burden of identifying, "*each*
 10 *objection that they believed were [sic] boilerplate (as there were more than on [sic]*
 11 *objection to each of the numbered responses) and to explain why they believe each is*
 12 *boilerplate.*" D. 191, p. 8 (emphasis in original) As support for their position, Defendants
 13 cite two cases, neither of which addresses discovery disputes. One states that the moving
 14 party bears the burden in a hearing on an order to show cause why mandamus should not
 15 issue. *McDonald v. Harding*, 57 F.2d 119, 124 (9th Cir. 1932). The other finds that a
 16 stipulated agreement between the parties places the burden on the party seeking to enforce
 17 the agreement, in this case, the Plaintiffs. *Parsons v. Ryan*, 949 F.3d 443, 471 (9th Cir.
 18 2020).

19 This, however, is a discovery dispute. Plaintiffs seek to have the court rule on the
 20 sufficiency of Defendants' responses to Plaintiffs' First Requests for Admissions. In
 21 discovery disputes, "the party who resists discovery has the burden to show that discovery
 22 should not be allowed, and has the burden of clarifying, explaining, and supporting its
 23 objections." *Pellerin v. Wagner*, No. 2:14-CV-02318 JWS, 2016 WL 950792, at *1 (D.
 24 Ariz. Mar. 14, 2016) (quoting *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal.
 25 2002)).

26 Defendants make extensive use of boilerplate relevance and vagueness objections,
 27 as well as objections that Plaintiffs' Requests call for legal conclusions. The extensive list
 28

1 of Requests where Defendants make use of these copy and paste objections are found at
2 footnotes 2-10 of Plaintiffs' Motion.

3 Defendants' only argument that their objections are not impermissible boilerplate is
4 that Plaintiffs bear the burden of identifying for Defendants each instance of boilerplate
5 before Defendants can be expected to take any action to supplement their responses. This
6 argument must fail, as it is based on an incorrect understanding of the law. Defendants have
7 the burden to show that discovery should not be allowed and they have not met their
8 burden. To the extent that Defendants have withheld admissions or denials based on these
9 objections, their responses are deficient. Plaintiffs ask that Defendants be ordered to
10 supplement their responses.

11 **D. Defendants' Responses Do Not Meet the Requirements of Fed. R. Civ.**

12 **P. 36**

13 Defendants' Responses to Plaintiffs First Request for Admissions are evasive,
14 qualified, and fail to meet the requirements set by Federal Rule of Civil Procedure 36. Fed.
15 R. Civ. P. 36(a)(4). Plaintiffs argue that Defendants' responses that do not meet the Rule's
16 requirement in their Motion to Determine the Sufficiency of Defendants' Responses to
17 Plaintiffs' First Request for Admission. Plaintiffs specifically cite Defendants' responses
18 to 32 Requests that do not admit, deny, or specifically state why they cannot do either in
19 footnote 12 of Plaintiffs' Motion (D. 187, p. 11) Defendants only respond specifically to
20 Defendant Lansky's response to Request Nos. 27, 33, Defendant Avid's response to
21 Request No. 68 and Defendants Reeves' supplemented response Nos. 8 and 55.

22 Defendants' Responses do not specifically deny all matters not admitted.
23 Instead, nearly all of Defendants' Responses specifically admit a non-responsive matter,
24 qualifying each admission such that it doesn't respond to Plaintiffs' Request or specifically
25 deny part or all of the Request. Such responses are insufficient. *See Blemaster v. Sabo*, No.
26 2:16-CV-04557 JWS, 2017 WL 4843241, at *2-3 (D. Ariz. Oct. 25, 2017).

27 Plaintiffs seek an order that Defendants amend their Responses to Requests
28 where Defendants did not clearly admit, deny, or explain why they could not; and where

they specifically admitted to a non-responsive matter, qualifying their responses such that it does not specifically deny some or all of the Request.

E. CONCLUSION

For the reasons set out in Plaintiffs' motion, Plaintiffs respectfully request judicial relief deeming Defendants' Responses to Plaintiffs' First Requests for Admissions admitted, or, in the alternative, ordering Defendants to supplement their Responses.

RESPECTFULLY SUBMITTED this 29th day of December 2025.

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